

Message Text

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ORIGIN L-03

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DRAFTED BY L/M/SCA:JABOYD:MA

APPROVED BY L/M/SCA:KEMALMBORG

ARA/NC:MCFORRESTER

L/ARA:TBOREK

ARA/MGT:BARTHOLEMEU

JUSTICE:BRISTAU (INFO)

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O 112133Z JAN 74

FM SECSTATE WASHDC

TO AMEMBASSY CARACAS IMMEDIATE

INFO AMCONSUL MARACAIBO IMMEDIATE

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E.O. 11652, N/A

TAGS: APER, CGEN, US, VE

SUBJECT: CONSUL IN MARACAIBO SUMMONED TO GIVE EVIDENCE
ABOUT AUTOMOBILE ACCIDENT

REF: CARACAS 97

1. DEPARTMENT HAS DIFFICULTY ADVISING EMBASSY ON THE BASIS OF INFORMATION PRESENTED IN CABLE FROM SANTA ANA, FALCON STATE. IF USG IS TO BE SUED, DEPARTMENT WISHES TO RETAIN LAWYER TO ADVISE HALL BEFORE HE RESPONDS TO QUESTIONS BY COURT. IF HALL IS BEING REQUESTED TO ANSWER QUESTIONS AS WITNESS AS PART OF ROUTINE INVESTIGATION, HALL MAY WISH TO RESPOND WITHOUT ASSISTANCE OF COUNSEL ESPECIALLY IN VIEW OF HIS INABILITY TO RECALL THE EVENTS.

2. WE ARE HANDICAPPED BY LACK OF KNOWLEDGE OF NATURE OF PROCEEDING, BUT DEPARTMENT BELIEVES EMBASSY MIGHT CONSIDER RETAINING LAWYER TO ADVISE AMBASSADOR AND HALL WITH REGARD NATURE OF INVESTIGATION AND THE POTENTIAL LIABILITY BOTH

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CIVIL AND CRIMINAL FOR HALL AND USG RESULTING FROM THIS

ACCIDENT. IF EMBASSY AGREES, DEPARTMENT AUTHORIZES EMBASSY TO PAY UP TO BUT NOT MORE THAN \$500 TO PURSUE SAME BUT NOT FOR INITIATION OR DEFENSE OF A LAWSUIT BY OR AGAINST THE USG. IF LITIGATION SHOULD ARISE, ADVISE DEPARTMENT IMMEDIATELY SO THAT DEPARTMENT OF JUSTICE MAY

RETAIN COUNSEL. DEPARTMENT OF JUSTICE RETAINS THE OPTION OF HIRING COUNSEL OTHER THAN THAT CHOSEN BY EMBASSY. DEPARTMENT DOES NOT GRANT PERMISSION FOR ATTORNEY RETAINED BY EMBASSY TO REPRESENT POSITION OF USG TO OTHER PARTIES NOR TO WAIVE SOVEREIGN IMMUNITY OF USG. SUCH AUTHORIZATION WOULD BE PURSUANT TO SECTION 810 OF TITLE 22 OF US CODE WHICH STATES THAT THE QUOTE SECRETARY MAY, WITHOUT REGARD TO SECTIONS 49 AND 314 OF TITLE 5, AUTHORIZE A PRINCIPAL OFFICER TO PROCURE LEGAL SERVICES WHENEVER SUCH SERVICES ARE REQUIRED FOR THE PROTECTION OF THE INTERESTS OF THE GOVERNMENT OR TO ENABLE AN OFFICER OR EMPLOYEE OF THE SERVICE TO CARRY ON HIS WORK EFFICIENTLY. UNQUOTE.

3. ON BASIS OF FACTS AT HAND, DEPARTMENT BELIEVES THAT ARTICLE 44 OF VIENNA CONVENTION ON CONSULAR RELATIONS IS APPLICABLE IN THAT HALL APPEARS TO BE CALLED AS A WITNESS. DEPARTMENT INTERPRETS ARTICLE 43 TO APPLY ONLY TO ACCIDENTS IN WHICH THE CONSULR OFFICER HIMSELF WAS THE DRIVER OF THE VEHICLE INVOLVED IN THE ACCIDENT. NOTE THAT PARA 1 OF ARTICLE 44 PROVIDES THAT NO COERCIVE MEASURE OR PENALTY CAN BE IMPOSED ON A CONSULAR OFFICER WHO REFUSES TO APPEAR AS A WITNESS; HOWEVER, UNLESS CLASSIFIED INFORMATION OR SOME OTHER SUCH UNUSUAL PROBLEM ARISES, DEPARTMENT GENERALLY AUTHORIZES CONSULAR OFFICERS TO APPEAR IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS IF REQUESTED.

4. IF EMBASSY RETAINS LAWYER, SEND COPY OF LEGAL OPINION TO DEPARTMENT. RUSH

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